IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL G. PADILLAS,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
STORK-GAMCO, INC.,	:	
	:	
Defendant.	:	**NO. 95-7090**

Reed, S.J. **September 28, 2000**

M E M O R A N D U M

Defendant Stork-Gamco, Inc., has filed a motion to bar the testimony of plaintiff Daniel Padillas' expert witness and a motion for summary judgment in this products liability action, which arises an injury plaintiff suffered while he was cleaning a chicken processing machine manufactured by Stork-Gamco. Defendant argues that summary judgment is appropriate because the testimony of plaintiff's expert is not admissible and the product is not unreasonably dangerous. Upon consideration of the motions and plaintiff's response, the motion to bar will be granted in part and denied in part, and the motion for summary judgment will be denied.

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, "the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (citing Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). The facts should be reviewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348 (1986)

(quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993 (1962)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts," Matsushita, 475 U.S. at 586, and must produce more than a "mere scintilla" of evidence to demonstrate a genuine issue of material fact in order to avoid summary judgment. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

1. Admissibility of the Testimony of Plaintiff's Expert Ralph Lambert

The admissibility of expert testimony turns on whether the expert is qualified, and whether the testimony meets the two requirements of Rule 702 of the Federal Rules of Evidence, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786 (1993) and Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 119 S. Ct. 1167 (1999: (1) that the methodology underlying the testimony is valid and (2) that the opinion will be helpful to the factfinder. This Court held a hearing on defendant's motion to bar the testimony of plaintiff's expert Ralph Lambert on September 15, 2000 to determine the admissibility of Lambert's testimony, at which Lambert testified and explained photographs and drawings.

Plaintiff's expert Ralph Lambert testified to his industrial engineering education, his licensure as a mechanical engineer, his more than three decades of experience as a plant manager and engineer in the food processing business, and his experience in forensic engineering. (Testimony of Ralph Lambert, Daubert Hearing Transcript, Sept. 15, 2000, at 7-20) ("Lambert Testimony"). He testified that he has supervised plant utilities in meat processing plants, and in particular has worked as a consultant for poultry processing companies. (Id. at 16). As a plant manager and engineer, he has worked with machines that make use of rotating blades and require guarding of such blades, as well as conveyor systems. (Id. at 17-19).

Based on the foregoing, I conclude that Lambert is generally qualified to give his opinion regarding the safety of food processing machine design and layout, and whether or not the food processing machine in this case required guarding, and therefore Lambert meets the first requirement for the admissibility of his opinions in this case.

During the Daubert hearing, Lambert provided some of the basis for the methodology that was absent from his report. Drawing on Marks Standard Handbook for Mechanical Engineers, which Lambert testified was the "gold standard ... for handbooks for mechanical engineers," (Id. at 97)[1] Lambert identified a hierarchy of the methodology accepted for analysis related to machine safety. (Id. 95-103, 111.) The first step, according to Lambert is to safeguard the machine at the design stage, *i.e.*, considering whether unsafe elements such as knives and blades are necessary at all. (Lambert Testimony, at 97.) If such elements must be included, the second step is to design the machine in order to place dangerous elements (knives, crushing points, etc.) in locations not in the normal work zone and not accessible to workers. (Id. at 100.) If hazards cannot be placed in inaccessible locations, the third step is to properly guard hazardous conditions. (Id.) Finally, if a hazard cannot be guarded, adequate warnings must be placed identifying hazards and notifying workers of them. (Id. at 102.) Lambert is not aware of any available or utilized system of peer review for this type of analysis. (Id. at 107-08.)

Lambert explained that he applied this methodology in assessing the safety of the Stork-Gamco DTC 4200 drum and thigh cutter involved in this case. First, he noted that a knife was

[1] These principles of safety in design analysis were accepted and published by the American Society of Agricultural Engineers and adapted in "Principles of Human Safety" (Triadine, 1987) (Lambert Testimony, 102-03). These publications reported that the hierarchy of analysis were not recently identified but were reflective of broad experience by safety organizations. (Id. at 103.)

necessary to the functioning of the machine. (Id. at 98.) Second, he noted that the hazard in the drum and thigh cutter, the blade, could not be completely moved out of the work zone as the machine was designed. (Id. at 100.) Thus, Lambert testified that the third step, properly guarding the hazard, was the appropriate manner in which to ensure the safety of the drum and thigh cutter involved here.

Lambert has offered his opinion that the drum and thigh cutter was improperly guarded, because a number of inches of access to the rotating blade were unnecessarily exposed to entry by a person operating or cleaning the machine, and that the most reasonable step would have been to extend a semi-circular guard already in place, so as to make inaccessible the unnecessarily exposed portion of the rotating blade. (Id. at 106.)[2] It is plaintiff's contention that it was through this unguarded opening that his left wrist encountered the moving blade.

This Court finds from Lambert's testimony that he never designed, sketched, or built the point-of-operation guard he thought would have solved the problem, because, he testified, he relied upon an extended guard which he believed was already incorporated into another similar Stork machine. Lambert also believed the other machine to be the basis for the Stork-Gamco drum and thigh cutter, the Stork PMT design ("PMT"), allegedly developed by a related corporation for use in Europe. (Id. at 59, 107.) Lambert based this opinion that a similar, more extended guard was adopted by the PMT design, on his examination of engineering designs for

[2] Lambert testified at the Daubert hearing that there was an opening of "nominally" 3 ½ inches between the semi-circular cover that encompassed 202 degrees of the 360 degree blade. (Lambert Testimony, at 56.) He agreed that "nominal" in this context means "approximate or likely." (Id.) The Court is troubled by the fact that Lambert was unable to testify with specificity as to the size of the opening (implying that he never measured it), and that Lambert never took or determined any measurements concerning the size of plaintiff's hand, wrist or arm, and has no information concerning the average size of the chicken parts typically passed through the machine at this point in the processing.

the PMT secured during discovery. (Id. at 109). He did not know when or in what volume the PMT design was used in Europe, and he knows of no similar accidents to users of a machine based on that design. (Id. at 109-110.)

Lambert also described two other alternatives that might have solved the alleged guarding deficiency in the Stork-Gamco machine. First, he opined that an exterior barrier fabricated and attached by Pennfield Farms after the accident to the drum and thigh cutter that injured plaintiff (on another, similar machine) at Pennfield farms (the "Pennfield nip-point barrier") was a superior guard that was capable of preventing the kind of accident that occurred in this case. (Lambert Testimony, at 112-13).[3] Second, he testified that a larger guard that encompassed the entire work station and prevented a worker from coming into any contact with the blade or shackles would have been the best way to ensure the safety of the drum and thigh cutter. (Id. at 114.) At his deposition, plaintiff referenced a third possibility; an interlock mechanism controlled by a light beam that would shut the machine down if a human body part inadvertently entered a hazardous location on the machine. (Deposition of Ralph Lambert, May 3, 2000, at 119-20.) There is no evidence that Lambert conducted any measurements or tests upon, or even sketched or saw any drawings or knew of or considered what material such a guard should be made of, concerning the Pennfield nip-point guard or made efforts to design an alternative guard such as the work-station guard or interlock device. (Id. at 70-76, 120.) Indeed, it was Lambert's position several times during his deposition testimony that it was not his job as a forensic expert

[3]Lambert visited the Pennfield Farms plant on October 10, 1995, about 15 months after the accident involving Padillas. (Lambert Testimony, at 28.) He was only able to see a drum and thigh cutter in place and operating on another similar machine because the machine in question had been dismantled and removed. (Id. at 30-31.) He observed that this other machine had on it a guard or device which he believed acted as a barrier to the alleged accident point on the machine. (Id. at 83.)

to design his suggested guard. (See, e.g., Lambert Deposition, at 125-26.)

Plaintiff argues that Ralph Lambert should be allowed to offer his expert opinion at trial that the Stork-Gamco drum and thigh cutter installed at Pennfield Farms was defective because it was not properly guarded, in view of the unguarded opening exposing the blade to the operator, and that it was possible to design a guard that would properly protect against the kind of injury suffered by plaintiff, *i.e.*, an alternative design.

Lambert offered during the Daubert hearing testimony of a general methodology for analyzing the potential safety of machines and generally the principles used in assessing their safety. Lambert offered scant testimony concerning an engineering methodology on the issue of how to design, fabricate or install a guard that would make a machine safe but not interfere with the operation of the machine. (Lambert Testimony, at 124-25.) Although the Marks-based methodology described in paragraphs 4 and 5 above offered by Lambert appears to help an engineer, and perhaps a jury, to decide whether a guard is necessary, the methodology offers no guidance as to whether a particular proposed alternative guard is sufficient. In other words, the methodology Lambert described and utilized in his analysis and report addresses the question of *when* to guard, but gives no guidance as to *how* to guard.

Thus, while I find that Lambert's conclusion that a guard was necessary on the Stork-Gamco drum and thigh cutter at Pennfield farms follows an accepted, reliable methodology, I also find that his observations concerning what kind, size, shape, and material for an alternative guard would have sufficed to make the machine safer do not follow from the methodology upon which he relied. Lamberts proffered opinions concerning the sufficiency of alternative guards such as the Pennfield nip-point barrier, the more extended PMT guard, the general work station

barrier, and the interlock device are nothing but conclusory statements lacking a foundation in any valid methodology expressed in his report, or at his deposition or at the Daubert hearing.

Under pointed questioning at the Daubert hearing from the Court and plaintiff's counsel on this additional analysis – that is, whether Lambert could offer a methodology on the issue of how to guard – Lambert vaguely referenced OSHA standards requiring the limitation of open space around hazard zones, and then read two apparently applicable passages from Marks, which provided, "Where possible the danger point should be completely covered by a barrier or enclosure before the hazardous operation of the machine begins. ... All guards, covers or enclosures should be designed strong enough to prevent the possibility of their giving way in permitting an accident in case the operation should fall down or be thrown against them." (Lambert Testimony, at 124-25.) However, Lambert did not, at the hearing or anywhere else, apply these principles to the guarding of the Stork-Gamco drum and thigh cutter or to the alternative guards he proposed, nor did he claim to have applied these principles in coming to the conclusions he had earlier testified to concerning the guarding of the machine at issue.

I conclude that Lambert's proffered testimony that in his opinion the extended PMT guard, the Pennfield nip-point guard, any general barrier of the work station, and any interlock or infrared beam device, as well as comparisons among these alternatives would cause the jury to speculate as to the basis for such opinions, confuse the jury and ultimately not be helpful to the jury's determination of whether or not the product was defective. I conclude that Lambert's opinions on the opinions as to alternative design defined immediately do not pass the Daubert/Kumho Tire test for reliability and shall not be presented to the jury. Rather, the opinions are simply "the *ipse dixit* of the expert," because there is too great a gap between the

opinion of the expert and the proffered methodology. See General Elec. Co. v. Joiner, 522 U.S. 136, 146, 118 S. Ct. 512 (1997) (concluding that analytical gap between data and scientific opinion too great to pass muster under Daubert).

In general, Mr. Lambert may, after suitable testimony as to his qualifications and any inspection and analysis made and including any necessary proper hypothetical question, testify only to his opinion that the product was unsafe and defective because of the absence of any cover or barrier to contact by plaintiff with the rotating blade. Lambert may not provide to the jury his opinions as to the safer alternative designs or the adequacy of the PMT guard or cover, or that any of these devices would have prevented the injury to plaintiff.

If plaintiff appropriately introduces evidence of the existence of a relevant design relationship between the PMT and the DTC 4200 Stork-Gamco machine in place at the time of the accident and a drawing or description of the PMT guard cover, Lambert may describe the drawings of the PMT device and provide measurements and factual descriptions of the device as compared to the DTC 4200 device. If such evidence is admitted, plaintiff may include in his arguments and theory of the existence of the alleged defect the fact that the semi-circular guard on the PMT machine, if present at the time of the accident, would have prevented the injury. The Court concludes that such an inference would be, in those evidentiary circumstances, permissible for the jury to make in the absence of expert opinion on the issue. Defendant will not be deemed to have opened the door on the issue of alternative design testimony from Lambert by merely questioning him on cross examination as to the fact that he did not undertake the various steps to prepare an alternative designs.

Accordingly, the motion to bar will be granted in part and denied in part. Because

Lambert's testimony that the product is defective is admissible, a genuine issue of material of fact is created and the motion for summary judgment on the ground that there will be no admissible expert testimony will be denied.

2. Unreasonably Dangerous Analysis

The Supreme Court of Pennsylvania[4] has required courts in § 402A cases to make a threshold determination of whether the product at issue is "unreasonably dangerous" before allowing the matter to go to a jury. See Azzarello v. Black Bros. Co., 480 Pa. 547, 557, 391 A.2d 1020 (1978); Dambacher v. Mallis, 336 Pa. Super. 22, 50, 485 A.2d 408 (1984). This determination involves a risk-utility analysis involving the weighing of seven factors:

> (1) The usefulness and desirability of the product - its utility to the user and to the public as a whole;
>
> (2) The safety aspects of the product - the likelihood it will cause injury and the probable seriousness of the injury;
>
> (3) The availability of a substitute product which would meet the same need and not be unsafe;
>
> (4) The manufacturer's ability to eliminate unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility;
>
> (5) The user's ability to avoid danger by exercise of care in using the product;
>
> (6) The user's anticipated awareness of the product's inherent dangers and their avoidability, because of general public knowledge of its obvious condition or the existence of suitable warnings or instructions; and
>
> (7) The feasibility, on the part of the manufacturer, of spreading loss by setting the price or carrying liability insurance.

Bowersfield v. Suzuki Motor Corp., No. 98-1040, 2000 U.S. Dist. LEXIS 12344, at *11 (E.D.

[4] This action involves a strict product liability claim related to an injury plaintiff sustained while cleaning a drum and thigh cutting machine manufactured by Stork-Gamco. The action is brought under Pennsylvania law, and the Supreme Court of Pennsylvania has adopted Section 402A of the Restatement (Second) of Torts as the governing law in strict products liability cases. See Webb v. Zern, 422 Pa. 424, 427, 220 A.2d 853 (1966).

Pa. Aug. 28, 2000) and Phatak v. United Chair Co., Pa. Super. , 756 A.2d 690 (2000) (both citing Dambacher v. Mallis, 336 Pa. Super. 22, 50 n.5, 485 A.2d 408 (1984)).

Once plaintiff makes a *prima facie* showing in his complaint that the alleged injuries were proximately caused by the product's design, the burden shifts to the defendant to show that the product was not unreasonably dangerous. See Shetterly v. Crown Controls Corp., 719 F. Supp. 385, 388 (W.D. Pa. 1989), aff'd, 898 F.2d 139 (3d Cir. 1990) (citing Barker v. Lull Engineering Co., 20 Cal. 3d 413, 573 P.2d 443 (1978)).

I conclude that plaintiff has made out a *prima facie* case in his complaint and has thereby shifted to defendant the burden of proving that the drum and thigh cutter was not unreasonably dangerous. I now turn to a consideration of whether defendant has met its burden of showing, through the seven Dambacher factors, that the utility of the drum and thigh cutter outweighed its risk to potential users.

Factor 1 – Utility of Product. Plaintiff concedes the social utility of the drum and thigh cutter manufactured by Stork-Gamco. I conclude presumptively (defendant has presented nothing but a conclusory statement on the merits of this factor) that the machine is useful to the public, particularly because of its ability to quickly process a high volume of chicken products results in cost savings to the consumer. While this factor appears to weigh in favor of defendant, defendant has produced no substantial materials to support its burden. This Court is not impressed that it can give this factor great weight..

Factor 2 – Safety Aspects of the Product. Typically, courts have analyzed this factor using statistics illustrating the injury rate for such a product. See, e.g. Shetterly, 719 F. Supp. at 400. In this case, however, despite the apparent value to both parties of such information, none

has been presented here, and therefore, I am left only with observations about the product itself. I observe that the drum and thigh cutter has a rotating blade which slices chicken parts that are carried to the blade via shackles. I conclude the blade and the shackles pose a serious risk of injury. As to the likelihood of injury, I observe that while the drum and thigh cutter is automated, and thus, in its concept and design, does not require or anticipate that a worker will have any part of his or her body close to the input force and the cutting force while the product is being processed, it is entirely foreseeable and likely that the machine requires cleaning on a regular basis and that such cleaning would involve the close proximity of persons to the shackles and blades.[5] Moreover, there is inherent in the cleaning operation the possibility that human error or distraction might cause an operator to get too close to the input or cutting force and thus inadvertently cause an injury. I conclude that there is a substantial likelihood of injury inherent in the design of the drum and thigh cutter, and that the type of injury likely to result is of a serious nature. Therefore, the second element weighs in plaintiff's favor. This factor is the most important in the analysis.[6]

Factor 3 – Availability of a Substitute. There is evidence in the record that there are at least two different products on the market that would meet the same need. (Deposition of Ralph

[5] There is evidence that regulations from the United States Department of Agriculture (USDA) require cleaning to be done while the machine is in operating, *e.g.*, while blade is rotating. Thus, it was entirely reasonable and foreseeable that the machine would be cleaned while in operation. Thus, defendants cannot advance a theory of assumption of the risk or voluntary misuse based on the cleaning of the drum and thigh cutter while the machine was in operation, because such a defense requires proof that the use of the machine employed by plaintiff was either unforeseeable or outrageous. See Childers v. Power Line Equip. Rentals, 452 Pa. Super. 94, 108, 681 A.2d 201 (1996) (citing Brandimarti v. Caterpillar Tractor Company, 364 Pa. Super. 26, 527 A.2d 134 (1987)). In light of the USDA regulations, I conclude that plaintiff's washing of the drum and thigh cutter while it was operating and thus moving was neither unforeseeable nor outrageous.

[6] The Court of Appeals for the Third Circuit focused on the second, fourth and fifth factors in its consideration of a lockout device on a road profiler machine. See Surace v. Caterpillar, Inc., 111 F.3d 1039, 1047-48 (3d Cir. 1997).

Lambert, at 130.) There is, however, scant evidence that those products would not be as unsafe as the Stork-Gamco machine installed at Pennfield Farms. Plaintiff does not suggest that there is a substitute machine available or known that would not be as unsafe. Plaintiff merely asserts that the Stork-Gamco machine should have been made safer. Defendant bears the burden here and has produced no evidence concerning the absence of other similar products or whether such products would be safer than the drum and thigh cutter at issue here. Therefore, I conclude that the information available to the Court on the third element is in equilibrium and thus has no material effect on the analysis.

Factor 4 – Ability to Eliminate Unsafe Aspect. Defendant must meet its burden of proving that there is no alternative, safer design of the machine that would eliminate the risk without impairing its usefulness or making the machine too expensive. Defendant has produced no evidence concerning the cost of additional guarding or its effect on the performance of the machine. It would appear that a nip-point guard, whether an extension of the original semi-circular guard or even the Pennfield nip-point barrier would not be very costly. (Deposition of Robert John Conklin, at 188). Defendant points to no information within or outside the record to suggest that the other alternative design by plaintiff (a more general barrier over the entire work station (Testimony of Ralph Lambert, Daubert Hearing Transcript, at 114)) would be prohibitively costly or would impair the usefulness of the machine. In the absence of evidence to the contrary, I will assume that the machine very likely could be made safer and perhaps eliminate the hazard inexpensively while not impairing its usefulness. Thus, this factor weighs in favor of the plaintiff. This factor is a very important factor in the analysis.

Factors 5 and 6 – Awareness of and Ability to Avoid Danger. It would be obvious to a

reasonable machine cleaner that the rotating blades are very dangerous and that the powered shackles pull toward the blade and should be avoided. Plaintiff testified to being aware of the dangers of the rotating blade, as did co-worker Howard Murray, and both made efforts to avoid the blades when they washed the machine. (Plaintiff's Deposition, at 61, 66; Deposition of Howard Murray, at 40-41.) Each received instruction on how to clean the machine while avoiding the blade, and both plaintiff and Murray had cleaned the machines numerous times without being injured. (Plaintiff's Deposition, at 46, 86; Murray Deposition, at 27, 29, 37.) Thus, I conclude that the fifth and sixth factors favor the defendant.

Factor 7 – Feasibility of Spreading the Loss / Obtaining Insurance. Finally, defendant has produced no evidence suggesting that it would not be feasible to spread any risk associated with the drum and thigh cutter or to obtain liability insurance and thus pass the cost on to its customer. It would appear to the Court that the volume of work performed by this machine would make it fairly simple for defendant and its chicken processing customers to spread the risk associated with the machine or purchase liability insurance. Therefore, I conclude that this factor favors the plaintiff.

Having weighed the seven Dumbacher factors and given each factor its relevant weight or importance in the analysis, I conclude based on the foregoing, for the purposes of this motion only, that defendant has not met its burden, and that the Stork-Gamco drum and thigh cutter used with an operating power blade partially exposed to access by a worker is unreasonably dangerous.

3. Conclusion

Having concluded that the testimony of plaintiff's expert is admissible in part, and having

concluded that Stork-Gamco DTC-4200 is unreasonably dangerous, I also conclude that there remains a genuine issue of material fact as to plaintiff's strict products liability claim. Because the Stork-Gamco DTC-4200 is unreasonably dangerous, and because plaintiff's expert may testify that the machine was insufficiently guarded, a reasonable jury could find that the machine was defective when it left Stork-Gamco's hands, and that the defect caused injury to plaintiff. Therefore, the case will continue toward trial.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL G. PADILLAS,	**:**	**CIVIL ACTION**
	:	
Plaintiff,	**:**	
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v.	**:**	
	:	
STORK-GAMCO, INC.,	**:**	
	:	
Defendant.	**:**	**NO. 95-7090**

O R D E R

AND NOW, this 28th day of September, 2000, upon consideration of the motion of defendant Stork-Gamco, Inc. to bar the testimony of plaintiff's expert Ralph Lambert (Document Nos. 38 and 48), and the motion of defendant for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Document No. 57), and the responses of plaintiff Daniel Padillas thereto, and having concluded, for the reasons set forth in the foregoing memorandum that there remains a genuine issue of material fact and that defendant is not entitled to judgment as a matter of law, **IT IS HEREBY ORDERED** that

(1) defendant's motion to bar the testimony of plaintiff's expert Ralph Lambert is **GRANTED IN PART** and **DENIED IN PART**, and plaintiff shall follow the instructions contained in the accompanying memorandum and prepare Lambert to do the same; and

(2) defendant's for summary judgment is **DENIED**.

LOWELL A. REED, JR., S.J.